



Via Email and Regular Mail
Francine.Crawford@fcc.gov

June 5, 2007

Ms. Cheryl J. King
Deputy Chief
Disability Rights Office
Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: **Complaint FCC IC No. 07-N98580 - Mr. Gary Bootay on behalf of
The Pennsylvania Society for the Advancement of the Deaf, Inc.**

Dear Ms. King:

We are in receipt of the above-captioned complaint dated May 3, 2007 from Mr. Gary Bootay on behalf of The Pennsylvania Society for the Advancement of the Deaf, Inc. regarding emergency information broadcast in video programming on WHTM-TV. Mr. Bootay alleges generally that “[e]mergency information that is provided in the audio portion of programming must be made accessible to persons with hearing disabilities by a method using real-time closed captioning as well as scripted captioning.” He further alleges that real-time closed captioning was not employed by WHTM-TV during a live broadcast from Three Mile Island sometime in the Fall of 2006 or during a tornado warning on September 28, 2006 telecast by WHTM-TV.

Respectfully, Mr. Bootay mis-cites the law. As WHTM-TV explained to Mr. Bootay in a letter dated April 27, 2007, all local television stations are *not* required to employ real-time closed captioning during every presentation of emergency information. Such a requirement would prove extremely difficult and costly for television stations such as WHTM-TV that are not licensed in a large media market. A requirement that television stations like WHTM-TV maintain round-the-clock real-time captioning capability for every randomly occurring report of breaking news would threaten the very ability to provide any emergency programming in any form. The station believes and the Commission has found that such a result would disserve everyone in the local community.

The Commission has recognized the risks inherent in balancing local stations’ ability to cover breaking emergency information and the equally important need to make television programming accessible to all. The FCC concluded that television stations like WHTM-TV that do not serve a top-25 television market need not employ real-time captioning when providing

WHTM-TV 3235 Hoffman St. Harrisburg, PA 17110


emergency programming. WHTM-TV is located in the 41st largest market. The Commission has made clear (in three separate Public Notices issued just last year) that television stations such as WHTM-TV may make emergency information accessible through real time captioning *or* through some form of visual presentation.

Contrary to Mr. Bootay's assertions, the facts demonstrate that WHTM-TV is not only cognizant of its responsibilities under the Commission's rules, but has developed visual information specifically with the hearing impaired community in mind that conveys vital emergency information on a real time basis. WHTM-TV met its requirements under §79.2 of the Commission's Rules in the Fall of 2006 and continues to do so. Mr. Bootay's letter describes how WHTM-TV made emergency information accessible via crawls, on-screen graphic, and audible tones. WHTM-TV notes that, whenever feasible, it makes emergency information available through traditional closed captioning as well. While the station constantly strives to improve its efforts in this important area, WHTM-TV clearly satisfies FCC requirements in this area.

That said, WHTM-TV appreciates the perspectives of Mr. Bootay. WHTM-TV understands its obligations to provide such information in graphic form or by captioning and has specifically designed its facilities to provide exactly that in the event instructions are provided to viewers as to how to respond to local emergency situations so as to ensure safety of life or property.

To the extent you have additional questions or concerns, please contact the undersigned.

Respectfully submitted,


H. Joseph Lewin
President and General Manager

cc: Mr. Gary Bootay
Corresponding Secretary of PSAD
6 Manor Drive
Mechanicsburg, PA 1705

WHTM Public Inspection File



Federal Communications Commission
Washington, D.C. 20554

May 3, 2007

Harrisburg Television, Inc.
WHTM-TV, Channel 27 & ABC Affiliation
3235 Hoffman Street
Harrisburg, PA 17110

Attention: Joseph Lewin, President and General Manager of Station WHTM-TV, Harrisburg, PA

**Re: Notice of Informal Complaint (NOIC) -- Disabilities Related
FCC IC No. 07-N98580, Gary Bootay on behalf of The Pennsylvania Society for
the Advancement of the Deaf, Inc**

Dear Mr. Lewin:

The Federal Communications Commission (FCC) has received a complaint about accessibility of programming providing emergency information from Gary Bootay of Mechanicsburg, PA. Specifically, the consumer alleges:

Lack of Accessibility for Persons with Disabilities

Mr. Bootay alleges that your station does not comply with the regulations regarding accessibility of emergency information in its news broadcasts. He states that there was no captioning or other visual information provided when regular programming was preempted for live on site broadcasting at "Three Mile Island" which shut down. He further states that on September 28, 2006, there was an emergency on the West Shore when a tornado touched down and there was no captioning to warn the deaf and hard of hearing residents. Mr. Bootay requests that the station make its emergency information accessible to persons with hearing disabilities by a method using real-time closed captioning as well as scripted captioning.

Remedy Requested

Accessibility in video programming of critical details and emergency information that is intended to further the protection of life, health, safety, or property.

The enclosed complaint has been filed with the Commission pursuant to Section 305 of the Act, 47 U.S.C. §305, and Section 79.2 (c) of the Commission's Rules, 47 C.F.R. § 79.2 et al. Upon receipt of this Notice, a letter acknowledging your company's receipt of this Notice and of the complaint should be sent to the complainant at the mailing address indicated below.

We are forwarding a copy of the complaint record so that your company may satisfy or answer the complaint based on a thorough review of all relevant records and other information. Your company should respond specifically to all material allegations raised in the complaint and summarize the actions taken by your company to satisfy the complaint. Your company's response to the complaint must be filed with the Commission in writing within **THIRTY days of the date of this Notice.**

The original of your response should be sent to the Disability Rights Office, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554.

Due to heightened security measures undertaken at this agency, and in Washington, D.C., and likely consequent delays in mail handling, an electronic copy of your response to the FCC should be sent also via Email to Francine.Crawford@fcc.gov. Your company is further directed to send a copy of its response to the complainant at the same time the response is sent to the Commission.

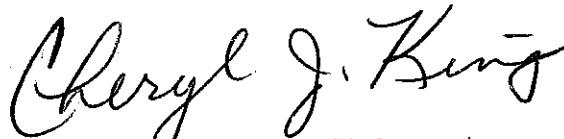
Your company is directed to retain all records which may be relevant to the complaint until final Commission disposition of the complaint.

File Number
IC No.07-N98580

Complainant
Gary Bootay
Corresponding Secretary of PSAD
6 Manor Drive
Mechanicsburg, PA 17055
gbootay@comcast.net

A resolution for this complaint is expected.

Sincerely,

A handwritten signature in black ink, reading "Cheryl J. King". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Cheryl J. King, Deputy Chief
Disability Rights Office
Consumer & Governmental Affairs Bureau

Enclosure



April 27, 2007

Mr. Gary M. Bootay
Corresponding Secretary
Pennsylvania Society for the Advancement of the Deaf, Inc.
6 Manor Drive
Mechanicsburg, PA 17055-6133

Re: Emergency Programming

Dear Mr. Bootay:

I recently received your letter to the FCC dated April 10, 2007, regarding WHTM-TV's practice of making emergency programming accessible to those with hearing and visual disabilities.

I respectfully take exception to your allegation about WHTM-TV's compliance with the FCC's emergency programming rule and its closed captioning rule. Quite simply, WHTM-TV fully complies with FCC requirements.

Your letter suggests that all local television stations must employ real-time closed captioning during every presentation of emergency information. Such a requirement would prove extremely difficult and costly for television stations such as ours that are not licensed in a large media market. A requirement that television stations like ours maintain round-the-clock real-time captioning capability for every randomly occurring report of breaking news would threaten the very ability to provide any emergency programming in any form. We believe that such a result that would disserve everyone in the local community.

The FCC recognizes the risks inherent in balancing local stations' ability to cover breaking emergency information and the equally important need to make television programming accessible to all. The FCC concluded that television stations like WHTM-TV that do not serve a top-25 television market need not employ real-time captioning when providing emergency programming. Rather, the FCC made clear in past orders (and in three separate Public Notices issued last year) that television stations such as ours may make emergency information accessible through real time captioning *or* through some form of visual presentation.

Your letter describes how WHTM-TV makes emergency information accessible via crawls, on-screen graphic, and audible tones. Note that, whenever feasible, we make emergency information available through traditional closed captioning as well. While we constantly strive to improve our efforts in this important area, WHTM-TV clearly satisfies FCC requirements in this area.

WHTM-TV 3235 Hoffman St. Harrisburg, PA 17110

Mr. Gary M. Bootay

April 27, 2007

Page 2

Finally, you informed the FCC that you had sent us a letter about four months ago. We typically respond promptly and in writing to letters about FCC requirements. I therefore personally asked my staff about any earlier letter from you; no one remembers receiving any such complaint. We also searched our public inspection file, which contains all correspondence from the public concerning programming and operations that WHTM-TV has received in the last three years. We did not locate any earlier letter from you on this matter. Finally, your April 10, 2007 letter to the FCC indicated that you would attach the earlier correspondence to WHTM-TV. Our copy of the letter you sent to the FCC did not include any attachments. It seems, then, that we did not receive your earlier correspondence. In any event, had we received an earlier letter from you on this matter, we would have responded promptly then, just as we are now.

WHTM-TV is proud of its record of serving the entire local community, and we are committed to making all emergency information fully accessible to those with hearing and visual disabilities. I trust this letter is responsive to your concerns. If you have any questions, please do not hesitate to contact WHTM-TV directly.

Sincerely,



Joe Lewin
President/General Manager

cc: Honorable Kevin J. Martin
Honorable Michael J. Copps
Honorable Jonathan S. Adelstein
Honorable Deborah Taylor Tate
Honorable Robert McDowell
Cheryl King, Esq. (Deputy Chief, FCC Disability Rights Office)
Debora Cunningham (Archive Reporting & Captioning Service, Inc.)
Sharon Behun (PA Office for the Deaf & Hard of Hearing)
Thomas King (PSAD)
Diania Bender (Hearing Loss Association of PA)
Henry Tamanini (PEMA)
Jim House (TDI)



PENNSYLVANIA SOCIETY FOR THE ADVANCEMENT OF THE DEAF, INC

Founded 1881 * Incorporated 1891

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April 10, 2007

Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, SW, Room 6C-447
Washington, DC 20554

RECEIVED & INSPECTED

APR 25 2007

FCC - MAILROOM

Dear Chairman Kevin J. Martin, Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert McDowell:

On behalf of the state-wide Pennsylvania Society for the Advancement of the Deaf and its 2,700 members I am writing this formal complaint on the lack of closed captioning of emergency TV broadcasts in the south central Pennsylvania area. Even though Harrisburg, PA is not one of the discriminatory "top 25 cities" of the country to have full closed captioning of TV programs, the FCC mandates that all TV stations must provide real-time closed captioning of live broadcasts of an emergency nature. The Harrisburg-York-Lancaster-Lebanon stations have failed to do so; hence this complaint.

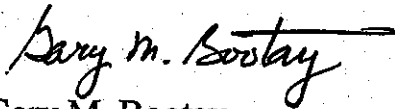
The enclosed packet of correspondence is self-explanatory. Letters were written four months ago (copies enclosed) to the four local TV stations to remind them of their obligation to provide full real-time closed captioning of live as well as station broadcasts of an emergency nature.

You may remember me as I was one of the approximately 175 speakers who testified on behalf of the deaf and hard of hearing citizens at the FCC Public Hearing on February 23, 2007 at the Harrisburg Whitaker Center. We are tired of being second-class citizens. TV graphics and scrolling are inadequate. Emergency information that is provided in the audio portion of programming must be provided by using real-time closed captioning.

WGAL-TV Channel 8 (NBC) has agreed to abide by the FCC Order as evident during the recent Valentine's Day snow and ice storm which practically paralyzed Pennsylvania. WPMT-TV Channel 43 (FOX) refused to comply. WHP-TV Channel 21 (CBS) and WHTM-TV Channel 27 (ABC) and not respond nor comply with the FCC mandate.

The main purpose of this letter is to ask the FCC to contact the aforementioned TV stations to remind them of their violations with a warning that they will be severely fined the maximum amount allowed by law if they refuse to comply with the FCC regulations regarding Accessibility of Emergency Information with full captioning of the audio portion.

Sincerely,



Gary M. Bootay
Corresponding Secretary, PSAD

cc: Debora Cunningham, Archive Reporting & Captioning Service, Inc.
Sharon Behun, Director, PA Office for the Deaf & Hard of Hearing
National Association of the Deaf
Thomas King, President, PSAD
Diana Bender, President, Hearing Loss Association of PA
Cheryl King, Esq. Deputy Chief, FCC Disability Rights Office
Henry Tamanini, PEMA
Jim House, TDI
Lou Castriota and Greg Zoerb, WHP 21 (CBS)
CBS Headquarters, New York
General Manager, WHTM 27 (ABC)
ABC News, New York
Robert Good and Carol Jacoby, WGAL 8 (NBC)
Jeff Zucker, President and CEO, NBC Universal
John Riggle, WPMT 43 (FOX)
Roger Ailes, Chairman & CEO, Fox News, New York



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April 10, 2007

Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, SW, Room 6C-447
Washington, DC 20554

Dear Chairman Kevin J. Martin, Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert McDowell:

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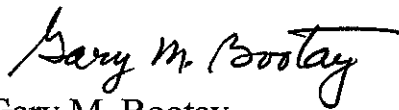
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You may remember me as I was one of the approximately 175 speakers who testified on behalf of the deaf and hard of hearing citizens at the FCC Public Hearing on February 23, 2007 at the Harrisburg Whitaker Center. We are tired of being second-class citizens. TV graphics and scrolling are inadequate. Emergency information that is provided in the audio portion of programming must be provided by using real-time closed captioning.

WGAL-TV Channel 8 (NBC) has agreed to abide by the FCC Order as evident during the recent Valentine's Day snow and ice storm which practically paralyzed Pennsylvania. WPMT-TV Channel 43 (FOX) refused to comply. WHP-TV Channel 21 (CBS) and WHTM-TV Channel 27 (ABC) and not respond nor comply with the FCC mandate.

The main purpose of this letter is to ask the FCC to contact the aforementioned TV stations to remind them of their violations with a warning that they will be severely fined the maximum amount allowed by law if they refuse to comply with the FCC regulations regarding Accessibility of Emergency Information with full captioning of the audio portion.

Sincerely,



Gary M. Bootay
Corresponding Secretary, PSAD

cc: Debora Cunningham, Archive Reporting & Captioning Service, Inc.
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John Riggle, WPMT 43 (FOX)
Roger Ailes, Chairman & CEO, Fox News, New York

Gary Bootay's Testimony at the FCC Hearing

All five members, including the chairman, of the Federal Communications Commission (FCC) appeared at the Whitaker Center in Harrisburg on February 23, 2007 for a full day of a public hearing on Broadcast Media Ownership in the Greater Harrisburg area. Gary Bootay represented PSAD and Barbara Beard represented HLA of PA. They were two of the approximately 175 people who testified.

Gary and Barbara spoke of similar concerns, namely the lack of closed captioning of live emergency TV broadcasts by the four local TV stations. Gary mentioned that he wrote a letter four months ago on behalf of the members of the Greater Harrisburg Chapter of PSAD to WHP 21 (CBS), WPMT 43 (FOX), WHTM 27 (ABC), and WGAL 8 (NBC) to remind them of their obligation, under FCC Order 79, to always provide closed captioning of live news broadcasts of an emergency nature. We have had emergency situations with several instances such as the Amish school shooting, tornadoes, earthquakes, road closings, Three Mile Island (TMI) warnings, etc which pre-empted regular TV programming. All of these broadcasts were not real-time captioned which was in violation of the FCC law. Only two TV stations responded to Gary's letter. One was negative and one was positive. FOX 43 refused to comply saying their video crawl and screen graphics were sufficient and "provided more information than mere captioning". WGAL 8 agreed to comply and will contact a reputable private firm to caption all emergency broadcasts. They were true to their word because they were the only TV station in the Harrisburg area to provide day-long captioning of the spoken word by on-site broadcasters during the recent Valentines Day snow and ice storm which practically paralyzed Pennsylvania. Gary further said he will follow up with a formal written complaint to the FCC to have them insure that all TV stations abide by the captioning law or be fined. Gary concluded his speech by saying "all we want is equal access". Sharon Behun, director of ODHHS, had to leave early and missed Gary's testimony. She asked "how did he do?". The answer she got was that nearly all of the people in the full auditorium, including the balcony, clapped their hands. The entire hearing was shown live on PCN TV.



PENNSYLVANIA SOCIETY FOR THE ADVANCEMENT OF THE DEAF, INC

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Greater Harrisburg Chapter
2006 - 2007

Richard Harkins
President
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Harrisburg, PA 17112-2135
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12 Granada Bldg
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Pauline Bittinger
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805 South Humer Street
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E-mail: pasl@aol.com

November 15, 2006

General Manager and Director of Programming
WHTM-TV ABC27
P.O. Box 5860
Harrisburg, PA 17403

Dear Sir or Madam:

I have been tasked on behalf of the Greater Harrisburg Chapter of the Pennsylvania Society for the Advancement of the Deaf to insure that your TV station is in compliance with the Federal Communications Commission (FCC) mandate that emergency news broadcasts, especially when live and on site, are captioned.

More specifically, in the East and West Shores of Harrisburg, Lancaster, York and Lebanon areas, whenever regular programming is preempted for emergency broadcasts that is intended to further the protection of life, health, safety and property including tornadoes, hurricanes, floods, earthquakes, explosions, civil disorders, serious accidents, road closings, etc., the TV station is supposed to provide captioning for the deaf and hard of hearing citizens according to FCC Order 79, Accessibility of Emergency Information. Also affected by the emergencies are evacuation orders, evacuation routes, approved shelters, instructions on how to secure personal property, road closures and how to obtain relieve assistance.

Emergency information that is provided in the audio portion of programming must be made accessible to persons with hearing disabilities by a method using real-time closed captioning as well as scripted captioning.

This letter was triggered by the lack of closed captioning by your network a couple weeks ago when regular programming was preempted for live on site broadcasting at Three Mile Island which shut down. It turned out, several hours later, not to be an emergency. But what if it was indeed an emergency? On September 28, 2006 there was a real emergency on the West Shore when a tornado touched down and there was no captioning to warn the deaf and hard of hearing residents.

The main purpose of this letter is to request that your station comply with the FCC regulations regarding Accessibility of Emergency Information by being prepared to cover all emergency situations with full captioning. You may want to look into Harrisburg's Archive Reporting & Captioning Services because of their very reasonable rates for live on site captioning. For more information contact Debora Cunningham at 717-234-5922 or access their website at www.archive reporting.com.

The members of Greater Harrisburg Chapter of PSAD are available to answer any of your questions or concerns. It is our hope that we can work together to insure full compatibility with the FCC orders pertaining to the verbatim captioning of all emergency news broadcasts. Please let us know how we can be of service. Your response is eagerly awaited.

Very sincerely,

Richard Harkins
President
Greater Harrisburg Chapter of PSAD

cc: Debora Cunningham, Archive Reporting & Captioning Service, Inc.
Sharon Behun, Director, PA Office for the Deaf & Hard of Hearing
National Association of the Deaf
Thomas King, President, PSAD
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